

THIS ADDENDUM REFLECTS RECENT CHANGES TO MEDIATION AND DUE PROCESS HEARINGS CONTAINED IN THE INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT (IDEIA). THIS ADDENDUM REPLACES PAGES 13-16 OF THE INDIANA DEPARTMENT OF EDUCATION'S NOTICE OF PROCEDURAL SAFEGUARDS AND PARENT RIGHTS IN SPECIAL EDUCATION.

ALL CHANGES ARE IN BOLD FONT.

MEDIATION

Sometimes, you may disagree with the school about your child's special education. Mediation is a process that may help you and the school resolve the disagreement about your child's disability identification or eligibility, evaluation, the level of services or placement, the provision of FAPE, or payment for services that you have obtained.

1. *What is mediation?*

Mediation is a way to discuss and resolve disagreements between you and the school with the help of an impartial third person who has been trained in effective mediation techniques. Mediation is a voluntary process, and both you and the school must agree to participate in order for the mediation session to occur. The mediation sessions are scheduled in a timely manner and held in a location that is convenient to the parties to the dispute.

A mediator does not make decisions; he or she facilitates discussions **and decision making**. The discussions in a mediation session are confidential and may not be used as evidence in subsequent due process hearings or civil **court** proceedings. If the mediation process results in full or partial agreement, the mediator will prepare a written mediation agreement that must be signed by both you and the school's representative. **In addition to describing the things you've agreed to, the mediation agreement will state that all discussions that occurred during the mediation are confidential and may not be used as evidence in a due process hearing or other civil court proceeding. The signed agreement is legally binding on both you and the school and is enforceable in court.**

2. *When is mediation available?*

Mediation is available to resolve a disagreement between you and the school regarding the identification, evaluation, placement, services, or the provision of a FAPE to your child. You may request mediation before, at the same time, or after requesting a due process hearing. Requesting mediation will not prevent or delay a due process hearing, nor will mediation deny any of your other rights. You or the school may suggest mediation, and it begins when both agree to participate. Participating in mediation is voluntary for both you and the school. Your right to a due process hearing is not delayed or denied by requesting or declining to participate in mediation.

3. *How do I request mediation?*

In order to initiate the process, you and the school must both sign a *Request for Mediation* form that is then sent to Division. A *Request for Mediation* form may be obtained from the school or from the Division. The Division will assign a mediator who will contact both you and the school to schedule a timely meeting in a convenient location.

4. *How is a mediator chosen and do I have to pay for the mediator?*

The Division maintains a list of mediators who are trained, qualified, and knowledgeable about the laws and regulations relating to the provision of special education and related services. A mediator is assigned based on a regional rotation basis.

No employee of Department of Education (including the Division), a local school corporation, or other public agency providing special education services is eligible to be a mediator. Mediators must not have

any personal or professional conflict of interest. Mediators are not considered to be employees solely because they are paid to provide this service. The Division bears the cost of the mediation process.

The school may establish procedures to **offer you the opportunity** to meet at a convenient time and location to have someone from a parent training center or alternative dispute resolution entity to discuss the benefits of the mediation process when you have opted not to participate in mediation with the school. However, the Division must approve any procedures established by the school before they can be implemented, and the procedures cannot be used to delay or deny your right to a due process hearing if you decline to participate in such a meeting. The Division pays for the cost of these meetings.

DUE PROCESS HEARINGS, APPEALS, COURT ACTIONS, and ATTORNEY FEES

A due process hearing is a formal proceeding in which evidence is presented to an independent hearing officer to resolve a dispute between you and the school regarding your child's disability identification, evaluation, eligibility, placement, services, or reimbursement of services you have obtained privately.

A request for a due process hearing must be made within two years of the date you knew or should have known about the alleged action forming the basis of your dispute with the school. This two-year limit does not apply if you were prevented from requesting the hearing due to specific misrepresentations made by the school that it had resolved the problem you complained about or if the school withheld pertinent information from you. Only a parent, the school, or the Department of Education may request a due process hearing regarding a student with a disability. Upon your request, the school must provide you with information on free or low-cost legal and other relevant services in your area.

1. *How do I request a due process hearing?*

To request a due process hearing, you need to send a signed, written request with the identified information to the addresses below:

DUE PROCESS HEARING	
What information is needed	Where to send the request
<ul style="list-style-type: none">▪ Your name, address, and telephone number;▪ Your child's name and address (if different);▪ The name of the school corporation and the school the child attends;▪ A statement of the reason for the hearing request, including a description of the problem and a statement of the facts relating to the problem; and▪ A proposal for resolution of the problem, to the extent known to you.	<p>Indiana Department of Education Division of Exceptional Learners Room 229, State House Indianapolis, IN 46204-2798 Phone: (317) 232-0570 Fax: (317) 232-0589</p> <p>Dr. Suellen K. Reed, Superintendent of Public Instruction Room 229, State House Indianapolis, Indiana 46204-2798 Fax: 317-232-8004</p> <p>Superintendent of the school corporation or public agency that serves your child.</p>

A model form to assist you with your request is available from the Division. **You will not be able to have a due process hearing unless your written request for a hearing contains all of the information listed above.**

2. *What happens after I send a request for a due process hearing?*

Once a request for hearing is received, an independent hearing officer is appointed, and he or she is provided with a copy of your hearing request. Otherwise your request remains confidential. The Division will send you and the school a letter notifying you of the hearing officer's appointment. **In addition, the school must abide by certain requirements within specific time periods after it receives your request for a due process hearing (see item #3 below for more details).** The school must also inform you of the availability of mediation and of any free or low-cost legal and other relevant services in the area.

3. *What actions must the school take once it receives my request for a due process hearing?*

A. Within 10 days of receiving your request for a due process hearing, the school must do two things:

- 1. Send you written notice regarding the subject matter of your request for a due process hearing including:**
 - a. An explanation of why the school proposed or refused to take the action that is the subject of the due process hearing;**
 - b. A description of the options the case conference committee considered, and the reasons they were rejected;**
 - c. A description of each evaluation procedure, assessment, record, or report the school used as the basis for its decision; and**
 - d. A description of the factors the school believes are relevant to its proposal or refusal.**

NOTE: The school is not required to send you this written notice after it receives your request for a due process hearing **IF** the school previously sent you prior written notice on the same matter.

- 2. Send you a written response that specifically addresses the issues you raise in your request for a due process hearing.**

B. If the school believes your letter requesting a due process hearing does not contain all of the required information listed above, it may send a letter to you and the hearing officer indicating that your request does not comply with the requirements. If the school is going to send this letter, it must do so within 15 days of receiving your request for a due process hearing. The hearing officer then has 5 days to determine if your request is sufficient and will immediately inform both you and the school in writing of the decision. If the hearing officer agrees with the school, you must resubmit the request for a due process hearing that meets all of the requirements. If the school does not challenge the contents of your request for a due process hearing, it is considered to meet all of the requirements.

C. Within 15 days of receiving your request for a due process hearing, the school must provide you with the opportunity for a resolution meeting to see if the matter can be resolved. See item #4 for more information on the resolution meeting.

4. *What is a resolution meeting, who attends, and what happens?*

Prior to the opportunity for a due process hearing, the school must convene a meeting called a "resolution session." The meeting must include a representative from the school with decision-making authority and relevant members of the case conference committee (CCC) who have information about the facts alleged in the hearing request. Unless you bring your attorney to this meeting, the school may not have an attorney at the meeting. In this meeting you will discuss the facts that formed the basis of your request and give the school an opportunity to resolve the issues raised in your request. You can agree with the school to use an alternative means to hold the resolution meeting (e.g., via video conference or conference telephone call).

5. ***Do I have to attend the resolution session?***
You do not have to attend a resolution session if you and the school agree in writing to waive it, or if you both agree to use the mediation process.
6. ***What if the school and I come to an agreement and resolve the issues that are the subject of my hearing request during the resolution session?***
If you and the school come to an agreement during this meeting, you will both sign a legally binding written agreement that will be enforceable in a court of appropriate jurisdiction. After it is signed, both you and the school have three business days to change your minds, and either of you may void the agreement during that time.
7. ***What if we waive the resolution session or if we don't reach agreement?***
If you and the school agree in writing to waive the resolution meeting or if you cannot resolve the issues in mediation or a resolution meeting within 30 days of the school receiving your request for a hearing, the due process hearing may occur. The 45-day timeline for the due process hearing begins at this point.
8. ***Can I change or add issues to my request for a hearing after it has been determined to meet all of the requirements?***
Once your request for a due process hearing has been determined to meet all of the requirements, you cannot change or add issues to the request unless one of the following occurs:
- The school agrees in writing that you can add or change issues and has the opportunity to conduct a resolution meeting on the new or changed issues, OR
 - The hearing officer gives you permission to make changes (but this cannot occur within the last five days prior to the due process hearing).
- If you are permitted to make changes or add issues to your request for a hearing, it *may* be treated as the first request for a due process hearing, and all of the timelines and events described in item #3 above could begin again.
9. ***When and where will the due process hearing take place?***
Before the hearing occurs, the independent hearing officer will contact you and the school to make arrangements for a prehearing conference. One of the things you will decide at the prehearing conference is when the hearing will occur. The hearing will be held at a time and place reasonably convenient to you and the school. The independent hearing officer will send you written notice about the time and the place of the hearing, as well as other procedural matters.
10. ***Who conducts the due process hearing?***
An independent hearing officer conducts the due process hearing. The Division maintains a list of individuals who serve as independent hearing officers, along with a list of each individual's qualifications. Individuals who serve as independent hearing officers cannot be employees of the state Department of Education or the school corporation that is involved in the student's care or education, and they cannot have any professional or personal interest that would conflict with his or her objectivity in conducting the hearing. **In addition, the hearing officer must possess knowledge of the federal statute and regulations governing special education services, as well as "legal interpretations" made by federal and state courts; possess the knowledge and ability to conduct hearings in accordance with standard legal practice, be able to render and write decisions in accordance with standard legal practice.** An individual who otherwise qualifies to conduct a hearing is not an employee of the school or agency solely because he or she is paid by the school or agency to serve as the independent hearing officer.
11. ***Can I raise new or additional issues during the due process hearing?***
You will not be able raise issues at the hearing that you did not include in your hearing request, unless the school agrees otherwise.

12. What are my rights and the school's rights during a due process hearing?

You and the school have the right to:

- be accompanied and advised by legal counsel and by individuals with knowledge and training with respect to special education or the problems of students with disabilities;
- present evidence, confront, cross-examine, and compel the attendance of any witnesses;
- prohibit the introduction of any evidence at the hearing that has not been disclosed at least 5 business days prior to the hearing;
- separate the witnesses so that they do not hear other witnesses' testimony; and
- be provided with an interpreter.

As a parent, you also have the right to:

- decide whether your child (who is the subject of the hearing) will attend the hearing;
- have the hearing opened or closed to the public; and
- obtain a written or an electronic (on diskette) verbatim transcript of the proceedings, as well as a written or electronic copy of the independent hearing officer's written decision, including findings of fact, conclusions, and orders without cost to you.

Before the hearing, you are entitled to a copy of your child's educational record, including all tests and reports upon which the school's proposed action is based. In addition, at least 5 business days before the date of the hearing, you and the school must disclose to each other the evaluations each intends to use in the hearing. Specifically, copies of all evaluations and recommendations based on those evaluations must be exchanged by that deadline. If either you or the school fails to make these disclosures on time, the hearing officer may bar the evidence from the hearing. If an evaluation is underway and has not been completed, it is necessary to inform each other and the independent hearing officer.

13. How does the hearing officer make the decision?

The decision of the hearing officer is made on substantive grounds based on a determination whether the school provided your child with a free appropriate public education (FAPE). If your request for a hearing includes or is based on alleged procedural violations, the hearing officer may find that your child did not receive a FAPE only if he or she finds that the procedural violations occurred AND that they: (1) impeded your child's right to a FAPE, (2) significantly impeded your opportunity to participate in the decision making process regarding the provision of FAPE, or (3) deprived your child of educational benefits. As part of his or her decision and order, the hearing officer may order the school to comply with the procedural requirements.

14. When will I get a copy of the independent hearing officer's written decision?

The independent hearing officer must conduct the hearing and mail you and the school a written decision within 45 calendar days from either: (1) the date that you and the school agreed in writing to waive the resolution meeting, or (2) the 30th day following the Department of Education's receipt of your request for a hearing if you and the school did not resolve the issues in mediation or a resolution meeting during the 30 day period. However, it may be longer than 45 days if the independent hearing officer grants a request for an extension of time from you or the school. The independent hearing officer's decision is final and the orders must be implemented **UNLESS** you or the school appeal the decision by requesting review by the Board of Special Education Appeals. (See questions 15 and 16 below).

15. Who pays for the due process hearing?

The school (or in some cases, the Division) is responsible for payment of the hearing officer's fees and the court reporter's charges. You are responsible for your costs of participating in the due process hearing (e.g., witness fees, your attorney's fees, costs of copying documents, etc.) Under certain circumstances, the school may be required to reimburse you for your attorney's fees.

16. What if I disagree with the independent hearing officer's written decision?

If you disagree with the independent hearing officer's written decision, you may request a review of the decision by the Board of Special Education Appeals. A request for review must be submitted

within 30 calendar days of the date you receive the written decision. Your signed, written request for review should include the following information:

REQUEST FOR REVIEW BY THE BOARD OF SPECIAL EDUCATION APPEALS	
What information is needed	Where to send the request
<ul style="list-style-type: none"> ▪ Your name, address, and telephone number; ▪ The file number assigned to the hearing ▪ A description of the errors you believe the hearing officer made, either in the conduct of the hearing or in the findings of fact, conclusions of law, or orders, including why you believe parts of the written decision are incorrect and the information you have in support of your position. 	<p>Superintendent of Public Instruction Attention: Legal Section Room 229, State House Indianapolis, IN 46204-2798 Phone: (317) 232-6676 Fax: (317) 232-0744</p> <p>Opposing party's (school corporation of public agency) address</p>

17. *What happens when the Board of Special Education Appeals reviews the independent hearing officer's decision?*

The Board will review the entire record of the hearing to ensure the procedures of the hearing were consistent with the requirements of special education due process procedures. The Board may ask you and the school to make an oral presentation. The Board may also decide to conduct a hearing to gather additional information. If the Board asks for oral argument or wants to conduct a hearing, it must be at a time and place reasonably convenient to you, your child, and the school. Both you and the school have the same rights as in the due process hearing. The Board will make an independent decision at the completion of its review. The Board's written decision will contain findings of fact, conclusions of law, and, if necessary, orders. The written decision will be mailed to you and the school. You have the option of receiving the Board's decision in an electronic (on diskette), rather than written format, either of which is free of charge.

18. *How long does it take the Board of Special Education Appeals to conduct a review?*

The Board must mail you and the school its written decision within 30 calendar days from the date the petition for review was first received by the Department of Education. However, a longer period of time is allowed if the Board has granted either party's request for an extension of time.

19. *What if I disagree with the Board of Special Education Appeals' decision?*

The Board's decision is final unless you or the school disagree with the decision and file a civil action in a state or a federal district court. An appeal to court must be filed within 30 calendar days of the date you received the decision of the Board. The records of the administrative proceedings are to be forwarded to the court for review. The court may hear additional evidence upon either party's request, make a decision based on a preponderance of the evidence, and order the relief it determines appropriate. The court's decision may be appealed to a court with appellate jurisdiction. **Federal** district courts of the United States have jurisdiction of actions brought under the IDEA without regard to the amount in controversy.

You may be entitled to file a lawsuit under other state or federal laws. However, if you are seeking a remedy that is also available under the IDEA or Article 7, you must first go through a due process hearing and administrative appeal.

20. *Where is my child placed during a due process hearing, appeal, or court proceeding?*

Except when your child has violated a school rule or has done something that could have hurt **himself or someone else**, during any due process or court proceedings your child stays in the

current educational placement, unless you and the school agree to another placement. If the hearing involves an application for initial admission to school, your child, with your consent, must be placed in public school until the proceedings are finished.

21. *If I have an attorney during the due process hearing, appeal, or court proceeding, can I be reimbursed by the school for my attorney fees?*

If an attorney represents you during a due process hearing (including an appeal and subsequent civil action), the court may award you reasonable attorney's fees if you ultimately prevail. You may also be eligible for an award of attorney fees if you are the prevailing party and were substantially justified in rejecting the school's settlement offer. The school may negotiate with you or your attorney regarding the amount of reimbursement and, if necessary, about who prevailed. If agreement is not reached through these negotiations, you may file an action in state or federal court for resolution of the disagreement. **However, the school or the Division may seek attorney's fees against your attorney if your attorney requests a hearing or files a subsequent cause of action that is frivolous, unreasonable or without foundation or if your attorney continued to litigate after the litigation was obviously frivolous, unreasonable or without foundation. The school or the Division may also seek attorney's fees from you or your attorney if the hearing request was presented for any improper purpose, such as to harass, to unnecessarily delay, or to needlessly increase cost of litigation.**

Mediation is not available to resolve a disagreement on attorney's fees. An action for attorney fees must be filed in a state or federal court within 30 calendar days after a final decision that is not appealed. Any fees awarded must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under the IDEA and Article 7.

The court may **not** award attorneys' fees for:

- services performed after the school made a timely written settlement offer to you, and the relief you finally obtained is not more favorable to you than the school's settlement offer (unless you were justified in rejecting that settlement offer) and the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedures or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins and the offer is not accepted within 10 days;
- any meeting of the case conference committee, unless the meeting was convened as result of an administrative proceeding or judicial action; or
- a mediation session that was conducted prior to the time the due process hearing request was filed.
- **the resolution session.**

The court may reduce an award for attorneys' fees if:

- you or your attorney unreasonably protracted the final resolution of the controversy;
- the fees unreasonably exceed the hourly rate prevailing in the community for similar services by attorneys of comparable skills, reputation, and experience, without a bonus or multiplier used in calculating the fee;
- the time spent and legal services furnished were excessive, considering the nature of the action or proceeding; or
- your attorney or you did not provide the school with appropriate information in the due process hearing request.

The court may not reduce reimbursement for attorney fees if the court finds that the school (or in some cases, the Department of Education) unreasonably protracted the final resolution of the action or proceeding or there was a violation of 20 USC § 1415. The school may use its federal special education funds to pay for the costs of a due process hearing, but it cannot use those funds to pay a parent's attorney's fees **or its attorney fees.**